

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WILLIAM ENGLAND,

Plaintiff,

v.

ISIDRO BACA, et. al.,

Defendants.

Case No. 3:14-cv-00189-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

I. SUMMARY

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 48) ("R&R") relating to Defendants' Motion for Summary Judgment ("Motion") (dkt. no. 36). The Court has reviewed Plaintiff's objection (dkt. no. 52) and Defendants' response (dkt. nos. 53). The Court accepts and adopts the R&R in full.

II. BACKGROUND

Plaintiff is an inmate in the custody of the Nevada Department of Corrections ("NDOC"). He is proceeding *pro se* in this action brought pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). The Court permitted Plaintiff to proceed on two claims under the First Amendment's Free Exercise Clause and RLUIPA. Plaintiff's allegations and Defendants' responses are explained in detail in the R&R, which this Court adopts. (Dkt. no. 48 at 2, 6-8.)

III. LEGAL STANDARD

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party

1 timely objects to a magistrate judge's report and recommendation, then the court is
2 required to "make a *de novo* determination of those portions of the [report and
3 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiffs'
4 objections, the Court has engaged in a *de novo* review to determine whether to adopt
5 Magistrate Judge Cobb's recommendation. Where a party fails to object, however, the
6 court is not required to conduct "any review at all . . . of any issue that is not the subject
7 of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has
8 recognized that a district court is not required to review a magistrate judge's report and
9 recommendation where no objections have been filed. See *United States v. Reyna-*
10 *Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by
11 the district court when reviewing a report and recommendation to which no objections
12 were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003)
13 (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district
14 courts are not required to review "any issue that is not the subject of an objection.").
15 Thus, if there is no objection to a magistrate judge's recommendation, then the court
16 may accept the recommendation without review. See, e.g., *Johnstone*, 263 F. Supp. 2d
17 at 1226 (accepting, without review, a magistrate judge's recommendation to which no
18 objection was filed).

19 IV. DISCUSSION

20 The Magistrate Judge recommends granting Defendants' Motion, as follows: (1)
21 claims for damages under RLUIPA; (2) claims for damages against Defendants in their
22 official capacities; (3) claims for injunctive relief under RLUIPA because Plaintiff's
23 transfer has rendered the conditions alleged in the Complaint moot; and (4) claims under
24 the Free Exercise Clause. (Dkt. no. 48.) Plaintiff's objection addresses the Magistrate
25 Judge's recommendation as to the claims under the Free Exercise Clause. The Court
26 has reviewed the R&R and agrees with the Magistrate Judge's recommendations.

27 Plaintiff's Free Exercise Clause claims are based on Defendants' decision in July
28 2013 to deny: (count I) Plaintiff access to the chapel, gym or activity room nightly for the

1 thirty days of Ramadan for the reading of the Quran and the breaking of the evening
2 fast; and (count II) Plaintiff and other inmates the opportunity to participate in their
3 Islamic Eid al-Fitr feast according to Islam law even though Defendants initially approved
4 such participation and Plaintiff and other inmates spent their money preparing for the
5 feast. (Dkt. no. 4 at 4, 11-12; dkt. no. 52 at 3.)

6 In the R&R, the Magistrate Judge thoroughly recited the parties' respective
7 arguments and analyzed the factors under *Turner v. Safley*, 482 U.S. 78 (1987) to
8 determine whether deference should be afforded to prison officials and whether the
9 reasons offered for denying Plaintiff's requests as alleged in counts I and II are
10 reasonably related to legitimate penological interests. (Dkt. no 48 at 6-13.) Plaintiff
11 argues that Defendants' claim of security concern should not be given deference
12 because those security concerns existed before Defendants Baca and Stogner were
13 placed in their position. (Dkt. no. 52 at 2.) Defendants have offered undisputed evidence
14 of procedural changes made in 2013 and 2014 to allow inmates to participate in the
15 celebration of Ramadan and the Eid al-Fitr feast. (Dkt. no. 36-1 at 2-3.) They have also
16 offered evidence that accommodating Plaintiff's request to congregate nightly in the
17 evening for group reading of the Quran and breaking of the evening fast for about 40
18 inmates would present security concerns because of reduction of staffing in the evening,
19 the chaplain's normal work hours would have to be modified to supervise the religious
20 services of faith groups that do not have an approved outside sponsor but doing so
21 would affect the services of other faith groups, and diverting the staff needed to
22 overseeing the nightly gathering for thirty days would paralyze the remainder of the yard.
23 (*Id.* at 3-4.)

24 Having reviewed the R&R, the briefs relating to Defendants' Motion and Plaintiff's
25 objection, the Court agrees with the Magistrate Judge's well reasoned analysis and
26 recommendations. The Court will therefore adopt the R&R.

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1 **V. CONCLUSION**

2 It is therefore ordered, adjudged and decreed that the Report and
3 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 48) be accepted and
4 adopted in full.

5 It is further ordered that Defendants' Motion for Summary Judgment (dkt. no. 36)
6 is granted.

7 The Clerk is directed to enter judgment in favor of Defendants and close this
8 case.

9 DATED THIS 25th day of March 2016.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE